Supreme Court, U. S.
FILED
DEC 2 1978
MICHAEL RODAK, JR., CLERK

No. 78-684

In the Supreme Court of the United States

OCTOBER TERM, 1978

AMERICAN SERVICE CORPORATION, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. Petitioners are in the business of renting or furnishing linen supplies to customers such as hotels, motels, restaurants and barber shops located in Southern Florida. A grand jury indicted petitioners and two other defendants, charging them with conspiring to restrain interstate trade and commerce by allocating their customers, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The indictment charged that petitioners ordered substantial shipments of linen supplies from out-of-state manufacturers[1] in anticipation of the continuing demands of their customers.[2] It further alleged that the

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[1]The alleged volume of linen supplies ordered from out-of-state manufacturers in 1973 was approximately $4 million.

[2]In 1973 the participants in the conspiracy allegedly received gross revenues from their linen Service business of approximately $11 million.

conspiracy to allocate customers had the effect of unreasonably restraining the interstate flow of linen supplies (Pet. App. 9-10).

Each petitioner pleaded *nolo contendere*. Petitioners subsequently appealed, arguing that the indictment did not adequately charge a restraint on interstate commerce. The court of appeals rejected that contention, noting that the indictment alleged that petitioners received linen supplies from out-of-state manufacturers in anticipation of the continuing demand of their customers and that such supplies totaled approximately $4 million in 1973. The court concluded that this allegation satisfied the commerce requirement of the Sherman Act (Pet. App. 11-12).

2. The decision of the court of appeals is in accordance with the decisions of this Court, and the petition presents no issue warranting further review. A conspiracy in restraint of trade violates the Sherman Act if it occurs in the flow of interstate commerce or substantially affects such commerce. See, *e.g.*, *Burke* v. *Ford*, 389 U.S. 320, 321 (1967). The court of appeals correctly held that the indictment adequately pleaded the interstate commerce element under both theories.

Although conceding that linen supplies may be part of the flow of commerce even though they are temporarily stored before delivery to customers, petitioners contend that such "goods can retain their interstate label only if they have been ordered in anticipation of the needs of *specific* customers" (Pet. 7; emphasis in original). As the court of appeals pointed out, however, the indictment plainly charged a flow of commerce from out-of-state manufacturers to petitioners for distribution to their customers (Pet. App. 11). See *Walling* v. *Jacksonville Paper Co.*, 317 U.S. 564, 567-569 (1943). The indictment

adequately informed petitioners of the interstate nature of the offense and described the channel of commerce through which the goods flowed. *United States* v. *Wilshire Oil Company of Texas*, 427 F. 2d 969, 974 (10th Cir.), cert. denied, 400 U.S. 829 (1970); *Las Vegas Merchant Plumbers Association* v. *United States*, 210 F. 2d 732, 739-742 (9th Cir.), cert. denied, 348 U.S. 817 (1954); *United States* v. *Cadillac Overall Supply Co.*, 568 F. 2d 1078, 1081-1082 (5th Cir.), cert. denied, No. 77-1389 (June 19, 1978). Nothing more is required of an indictment.[3]

The court of appeals also properly held that the indictment satisfied the interstate commerce requirement by pleading an effect on commerce (Pet. App. 10). The indictment charged that during 1973 some $4 million worth of goods were ordered by petitioners from out-of-state to meet local consumer demand. The indictment further charged that trade in these goods was unreasonably restrained by a customer allocation conspiracy, a *per se* violation of the Sherman Act. Such facts, if proved, would demonstrate that a significant volume of interstate trade was substantially affected by the conspiracy. *Burke* v. *Ford*, *supra*; *Goldfarb* v. *Virginia State Bar*, 421 U.S. 773 (1975); *Hospital Building Co.* v. *Trustees of Rex Hospital*, 425 U.S. 738 (1976).

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[3]If the indictment informs a defendant of the elements of the offense, protects him against double jeopardy, and provides enough information to allow him to prepare an adequate defense, then it is sufficient. *Hamling* v. *United States*, 418 U.S. 87, 117 (1974). The government need not catalogue its evidence; it is sufficient to "set forth the offense in the words of the statute itself." *Ibid.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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DECEMBER 1978